

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CYNTHIA BI,

Plaintiff and Appellant,

v.

GUIQIN ZONG et al.,

Defendants and
Respondents.

B286293

(Los Angeles County
Super. Ct. No. BC421870)

ORDER MODIFYING
OPINION AND DENYING
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on May 1, 2019, be modified as follows:

On page 3, first full paragraph, second sentence which states: “The cross-complaint, which added as cross-defendants appellant’s brother, Xinan Bi, and appellant’s son, Kevin Chung, alleged that appellant and her family had defrauded respondents concerning the property.” Is modified to state:

The cross-complaint, which added as cross-defendants appellant’s brother, Xinan Bi, and appellant’s son, Kevin Chung,

alleged that appellant and her family had refused to contribute money under their partnership agreement for the property's construction.

The modification effects no change in the judgment.
Appellant's petition for rehearing is denied.

ROTHSCHILD, P. J.

CHANEY, J.

LEIS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed

Cynthia Bi, in pro. per., for Plaintiff and Appellant.

Mark M. O'Brien for Defendants and Respondents.

In this second appeal to this Division in this matter, Cynthia Bi appeals from the trial court's judgment partitioning property that she and her husband, who is not a party to this appeal, own with their former business partners, respondents Guiqin Zong and Guoliang Li. Cynthia Bi also appeals from the court's order that she pay respondents \$88,400.49 under a partnership accounting. We affirm.

PROCEDURAL AND FACTUAL HISTORY

1. The First Appeal

In 2001, appellant Cynthia Bi and her husband, Min Hwa Chung, and another married couple, respondents Guiqin Zong and Guoliang Li, entered into a partnership to buy 1132-1136 Sunset Blvd. in Arcadia. At the time, the property had income-producing rental units. Initially, the two couples planned to own the property 50-50 and to contribute equally towards the property's finances, but over time respondents contributed more than their share financially and appellant and her husband contributed less. Eventually, the couples entered into an oral agreement to build two condominiums on the property, with each couple contributing half the cost of construction. When construction was complete, the parties moved into their respective condominiums. But things did not go well.

In 2009, appellant and her husband filed a complaint against respondents. The complaint alleged causes of action for breach of contract, breach of the covenant of good faith and fair dealing, negligent misrepresentation, fraud, unjust enrichment, and for specific performance of the subdivision or legal partition of the property. The gist of the complaint alleged respondents had defrauded appellant and her husband in the two couples'

purchase of the property and later agreement to build the condominiums.

Respondents filed a cross-complaint against appellant and her husband. The cross-complaint, which added as cross-defendants appellant's brother, Xinan Bi, and appellant's son, Kevin Chung, alleged that appellant and her family had defrauded respondents concerning the property. The cross-complaint sought dissolution of the partnership between the two couples, a partnership accounting, and the property's partition.

In January 2011, the trial court conducted a bench trial. After closing arguments, the trial court stated it was inclined to enter judgment for respondents against appellant and her family. Based on the court's statement, the parties requested a recess to discuss settlement. After the recess, the parties returned to the courtroom to announce they had reached a settlement that they recited on the record in open court.

Based on the settlement, the trial court dismissed appellant's complaint and entered judgment for respondents on appellant's complaint and respondent's cross-complaint. The court ordered respondents to sign all documents needed to subdivide the property, and ordered appellant and her husband to pay respondents \$83,800 when those documents were recorded. In addition, the court ordered the partnership's dissolution.

Appellant and her son, Kevin Chung, who is not a party to the second appeal that is currently pending before us, filed notices of appeal. In an unpublished opinion in January 2014, this Division affirmed the trial court's judgment in part and reversed it in part. (*Bi v. Zong* (Jan. 9, 2014, B240198) [nonpub. opn.].) This Division affirmed dismissal of appellant's complaint. It also affirmed the property's partition to the extent the

partition gave respondents one-half of the property. This Division found, however, that the trial court had erred in calculating ownership percentages among appellant's family members of their one-half interest in the partitioned property. This Division also found that appellant had not agreed to pay respondents \$83,800 for the partnership accounting under the settlement the parties had negotiated after closing arguments and that the trial evidence, in particular the testimony of respondents' expert accountant Edward Yu, did not support the trial court's order that appellant pay \$83,800 to respondents. This Division remanded the matter to the trial court for a new trial of the partnership accounting and to determine the ownership percentages of appellant's family members in their half of the property.

2. The Current Appeal

In December 2016, the case was retried following remand from the first appeal. In its June 2017 statement of decision following a bench trial, the trial court credited the testimony of respondents' expert accountant Edward Yu that appellant owed respondents \$83,800 under the partnership accounting. The trial court noted that appellant did not offer expert testimony to challenge expert Yu and appellant's cross-examination of Yu did not undermine Yu's conclusions. The trial court also found that appellant owed respondents \$4,600 for appellant's half of the cost of condominium-design plans.

In September 2017, the trial court entered judgment, replacing the 2011 judgment from the first appeal. The September 2017 judgment dismissed the complaint by appellant and her husband and dissolved their partnership with respondents. The judgment also ordered appellant to pay

respondents \$88,400.49 (\$83,800.49 + \$4,600), with the trial court ordering pre-judgment interest for the \$4,600 appellant owed on the condominium-design plans. Finally, the judgment ordered the property's partition into two parcels, one of which – Parcel 1 – contained both condominiums, as follows:

- Appellant received a one-half undivided interest, her brother Xinan Bi received a one-fourth undivided interest, and her son Kevin Chung received a one-fourth undivided interest, in their condominium identified as Unit 1 on Parcel 1. They also received the same proportionate interests in their undivided half-interest in Parcel 2, which they shared as tenants-in-common with respondents.

- Respondents received the second condominium, identified as Unit 2 on Parcel 1, and a one-half undivided interest in Parcel 2, which they shared as tenants-in-common with appellant, her brother, and her son.

This appeal followed.

DISCUSSION

ARGUMENT I

Appellant contends the September 2017 judgment “is not consistent with [the] Court’s true determination.” Appellant does not quarrel with her family getting one condominium and respondents’ receiving the second. She disagrees, however, with the trial court’s allocation of ownership percentages of her family’s condominium among her family members. The correct allocation, according to appellant, comes from her purported off-the-record agreement in October 2017 with respondents’ counsel dividing the condominiums, in which she and respondents’ counsel allegedly agreed appellant’s brother, Xinan Bi, her son Kevin Chung, and Michael Chung (whose relationship to

appellant is not stated in the record, but we presume is a second son) would each receive a one-third interest in her family's condominium. Appellant asks that we order respondents to sign a grant deed prepared at her direction that reflects the ownership percentages that she purportedly reached with respondents' counsel.

Appellant's contention that the trial court erred fails. Appellant cites no authority that her alleged off-the-record agreement with respondents' counsel may override or amend the September 2017 judgment. Moreover, the trial court issued a statement of decision and no reporter's transcript exists from the trial. In appellant's request for a statement of decision she identified 18 principal controverted issues, seven objections, and five proposed additions to the statement of decision, but she did not identify as principal controverted issues the names of the condominium's owners or their ownership percentages. Accordingly, the doctrine of implied findings applies, which means we presume the trial court received sufficient evidence at trial to support the court's identification of the owners and ownership percentages of appellant's condominium. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134 [failure to alert trial court to alleged deficiencies in statement of decision waives those deficiencies and triggers implied findings]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295 [appellant must present adequate record for appellate review]; *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 186-187 [appellant's failure to provide reporter's transcript or other record of oral proceedings fatal to appeal when those proceedings are relevant to appeal].)

ARGUMENT II

Appellant contends the trial court procedurally erred in dissolving the partnership that she and her husband had with respondents. In support, appellant cites statutes that touch upon partnership dissolution, but she does not show where in the record the trial court violated those statutes. Her contention thus fails. (*Villanueva v. Fidelity National Title Co.* (2018) 26 Cal.App.5th 1092, 1110, fn. 8.)

Appellant also contends that the trial court's judgment ordering her to pay respondents \$88,400.49 lacked substantial evidence. She asserts the second trial merely rehashed respondents' accounting evidence from the first trial, which this Division had found was insufficient when this Division reversed the accounting portion of the first trial's judgment. (*Bi v. Zong*, *supra*, B240198, at pp. 10-13.)

To prevail on the grounds of insufficient evidence, appellant must discuss all the evidence that supports the trial court's ruling on the partnership accounting. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Shenouda v. Veterinary Medical Bd.* (2018) 27 Cal.App.5th 500, 514.) Appellant did not provide this court with a reporter's transcript from the trial, and her opening brief (she did not file a reply brief) does not discuss the evidence that supports the judgment. Her opening brief's discussion of what she believes her trial exhibits proved does not remedy her failure to provide a complete record for our review, and does not satisfy her obligation to discuss the evidence that supports the judgment. Based on those deficiencies, appellant forfeits her challenge to the sufficiency of the evidence. (*Shenouda*, at p. 514; *Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

ARGUMENT III

Appellant contends the trial court erred in relying on the testimony of respondents' expert accountant Edward Yu because, according to appellant, Yu did not support his testimony with documents.

Appellant's contention fails because she did not provide a reporter's transcript from the trial, thus we do not know the details of Yu's testimony. (*Maria P. v. Riles, supra*, 43 Cal.3d at p. 1295; *Foust v. San Jose Construction Co., Inc., supra*, 198 Cal.App.4th at pp. 186-187.) Moreover, the trial court's statement of decision found that Yu testified that he had reviewed "substantial backup documents" that supported his accounting, a finding that contradicts appellant's contention.

ARGUMENT IV

In addition to the partnership accounting, respondents introduced at trial evidence that respondents had paid \$9,200 to a condominium-design planner in 2002 on behalf of appellant and respondents. The trial court ordered appellant to reimburse respondents \$4,600 for appellant's half of the payment. In addition, the trial court ordered appellant to pay pre-judgment interest beginning from September 4, 2002, when the amount appellant owed respondents for the design planner was certain.

Appellant contends the trial court erred in awarding pre-judgment interest. In support, appellant cites *Freese v. Smith* (1952) 114 Cal.App.2d 283. Appellant's reliance on that decision is misplaced because the *Freese* court awarded pre-judgment interest in a partnership-windup proceeding in which the amount of money that one partner owed the other was not established until the trial ended. (*Id.* at p. 290.) Accordingly, the amount owed before judgment was not an amount certain. Here, in

contrast, the \$9,200 the parties owed to the design planner – for which appellant was half-responsible – was a known amount as of September 4, 2002.

Appellant also cites *Schmidt v. Waterford Winery, Ltd.* (1960) 177 Cal.App.2d 28, 34-35, but that decision is distinguishable, too. In *Schmidt*, the amount owed was not certain because its calculation involved a complicated formula incorporating several contingencies. Here, however, the \$4,600 that appellant owed was a known amount.

APPELLANT'S MOTION TO CONSIDER NEW EVIDENCE

In December 2018, following the completion of briefing in this court, appellant filed a motion asking us to receive as new evidence emails exchanged between her and respondents' counsel between December 2016 and July 2018. (See Code Civ. Proc., § 909; Cal. Rules of Court, rule 8.252(b) & (c).) According to appellant, those emails document her efforts to get respondents to sign a grant deed to appellant's family members under an agreement that appellant alleges she reached with respondents' counsel. Under that agreement, according to appellant, she was not to be on title for her family's condominium; instead, her brother Xinan Bi, her son Kevin Chung, and Michael Chung, were to take title.

The circumstances under which this court may receive new evidence are very rare. (*Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1090.) Appellant asks that we rely on her purported agreement with respondents' counsel to reverse the trial court's judgment about ownership percentages in appellant's condominium. Reversing a judgment where the trial record contains conflicting evidence and substantial evidence supports the trial court's judgment is not

the type of rare circumstance that the law envisions for receiving new evidence of appeal. (*Ibid.*; see *City of Port Hueneme v. City of Oxnard* (1959) 52 Cal.2d 385, 392 [improper to receive new evidence to reverse trial court]; but see *Bombardier Recreational Products, Inc. v Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 605 [reviewing court may receive new evidence to reverse trial court if reversal ends litigation]; *Monsan Homes, Inc. v. Pogrebneak* (1989) 210 Cal.App.3d 826, 830 [same].) Because the law and facts do not support appellant's motion, we deny it.

DISPOSITION

Appellant's motion to receive new evidence is denied. The judgment is affirmed. Respondents to recover their costs on appeal.

NOT TO BE PUBLISHED.

LEIS, J.*

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.